

### REMARKS

Entry of the foregoing amendments is respectfully requested. The Office Action asserts that sequence identifiers are missing from lines 18 and 27 of page 29 and the descriptions of Figures 13-14. By the present amendment a BRIEF DESCRIPTION OF THE DRAWINGS section is added to better conform with patent application formatting under U.S. practice. The descriptions of the drawings that have been added are taken from and supported by descriptions thereof that can be found throughout the Specification as originally filed. The descriptions of Figures 13 and 14 include sequence identifiers. In addition, the Specification is amended on page 29 to insert appropriate references to the Sequence Listing.

#### Restriction Requirement

The Office Action sets forth a restriction requirement between groups as follows:

I. Claims 20, 23, and 28-31 drawn to a Bt14 protein, compositions comprising it and methods of using it.

II. Claims 21-22, 24-27 and 32, drawn to a nucleic acid encoding a Bt14 protein, chimeric genes, plants, seed, and plant cell comprising it, and a method of using it.

Applicants elect, with traverse, Group II, claims 21-22, 24-27 and 32. The requirement is traversed because Applicants respectfully submit that the restriction requirement does not meet the necessary criteria under the policy of the Office set forth in M.P.E.P. § 803.

Applicants respectfully remind the Examiner that the burden required to justify a restriction requirement according to M.P.E.P. § 803 must be a serious burden. Not just any burden is sufficient. If the search and examination of all the claims in an application can be made without serious burden, the Examiner must examine all the claims on the merits, even though they include claims to independent or distinct inventions. *See*, M.P.E.P. § 803.

It is noted that claims 21-32 depend, directly or indirectly, from claim 20. Thus a search of any of the elected claims necessarily entails a search of the subject matter of non-elected claim 20. For example, in non-elected claim 23, the recited protein is defined as the protein encoded by the DNA of elected claim 22. Thus, a search of these claims would necessarily overlap substantially. In view to the foregoing, it is apparent that the subject matter of Groups I and II is sufficiently related that no serious burden can reasonably be said

to exist to examine all the claims of the application. Therefore the restriction requirement should be withdrawn. Such action is earnestly requested.

**CONCLUSION**

In view of the foregoing, examination on the merits and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this Amendment and Reply or the application, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

BUCHANAN INGERSOLL PC

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